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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2011-251**

13 **LINDA MARY MACDONALD, a.k.a.**
14 **LINDA M. MACDONALD, a.k.a.**
15 **LINDA PERRIS**
21263 Heather Lane
Volcano, CA 95689

ACCUSATION

16 Registered Nurse License No. RN 252971

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.ED., RN, Interim Executive Officer (Complainant) brings this
21 Accusation solely in her official capacity as the Interim Executive Officer of the Board of
22 Registered Nursing (Board), Department of Consumer Affairs.

23 **Registered Nurse License**

24 2. On or about April 30, 1975, the Board issued Registered Nurse License Number
25 252971 to Linda Mary MacDonald, also known as Linda M. MacDonald and Linda Perris,
26 (Respondent). The registered nurse license was in full force and effect at all times relevant to the
27 charges brought herein and will expire on May 31, 2011, unless renewed.

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JURISDICTION

3. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct...,

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

6. Code section 2762 states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of

1 this section, or the possession of, or falsification of a record pertaining to, the
2 substances described in subdivision (a) of this section, in which event the record of
3 the conviction is conclusive evidence thereof.

4 7. Code section 4022 states:

5 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
6 self-use in humans or animals, and includes the following:

7 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
8 without prescription," "Rx only," or words of similar import.

9 (b) Any device that bears the statement: "Caution: federal law restricts this
10 device to sale by or on the order of a _____," "Rx only," or words of similar import,
11 the blank to be filled in with the designation of the practitioner licensed to use or
12 order use of the device.

13 (c) Any other drug or device that by federal or state law can be lawfully
14 dispensed only on prescription or furnished pursuant to Section 4006.

15 8. Code section 4023 states, in pertinent part:

16 "Device" means any instrument, apparatus, machine, . . . or contrivance,
17 including its components, parts, products, or the byproducts of a device, and
18 accessories that are used or intended for either of the following:

19 (a) Use in the diagnosis, cure, mitigation, treatment, or prevention of disease in
20 a human or any other animal.

21 (b) To affect the structure or any function of the body of a human or any other
22 animal.

23 9. Code section 4140 states:

24 No person shall possessor have under his or her control any hypodermic needle
25 or syringe except when acquired in accordance with this article.

26 10. Health and Safety Code section 11377 provides, in pertinent part, it is unlawful
27 to possess controlled substances unless prescribed by a physician, dentist, podiatrist, or
28 veterinarian, licensed to practice in California, and violators shall be imprisoned in a
county jail for a period of not more than one year or in the state prison.

CONTROLLED SUBSTANCES

11. **Ativan** is a drug within the group of drugs known as Benzodiazepine and is a
Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision
(d)(16).

1 12. **Marijuana** is a Schedule I controlled substance as designed in Health and Safety
2 Code section 11054, subdivision (d)(13).

3 13. **Versed** is a brand name for Midazolam Hydrochloride, a Schedule IV controlled
4 substance as designated by Health and Safety Code section 11057, subdivision (d)(21).

5 **DANGEROUS DRUGS REQUIRING PRESCRIPTIONS**

6 14. Alcon (Tetracaine HCl)

7 15. Ampicillin

8 16. Augmentin 875mg, #5

9 17. Bacteriostatic

10 18. Beepen VK 500mg

11 19. BusPIRone

12 20. Carafate

13 21. Celebrex

14 22. Cephalexin (Keflex)

15 23. Cexamethasone (Corticosteroid)

16 24. Clindamycin (Cleocin)

17 25. Dexamethasone

18 26. Doxycycline Hyclate

19 27. Dropidol

20 28. Duricef (Cefadroxil) 500mg

21 29. Flurosemide

22 30. K-Dur 20 (Potassium chloride Extended Release)

23 31. Ketorolac Tromethamine

24 32. Lidocaine

25 33. Lithium Heparin

26 34. Methocarbamol 750 mg

27 35. Metronidazole

28 36. Nystatin cream USP

37. Penicillin
38. Pepcid (Famotidine)
39. Potassium
40. Rocephin (Ceftriaxone Sodium)
41. Robinul Glycopyrrolate
42. Sulfamethoxazol 800mg/Trimethoprim 160mg
43. Tetracycline
44. Trimox (Amoxicillin) 500mg
45. Zithromax

COST RECOVERY

46. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

47. Respondent has subjected her license to discipline pursuant to Code section 2761, subdivision (f), in that Respondent has been convicted of the following crimes that are substantially related to the qualifications, functions, and duties of a registered nurse:

a. On or about April 14, 2006, in the matter titled *People vs. Linda Mary MacDonald*, Superior Court, County of Amador, California, Case No. 05CR9116, Respondent was convicted following her plea of guilty to violating Health and Safety Code section 11377, subdivision (a) [possession of a controlled substance without a valid prescription], a misdemeanor. The circumstances of the crime are that on or about April 7, 2005, a search warrant was served upon Respondent's residence. During the search, the controlled substance Midazolam, a.k.a. Versed, was found. Respondent did not have a prescription for that controlled substance.

1. During the search of Respondent's home by the Amador County Sheriff's Office on April 7, 2005, the following contraband was found: numerous sharps, syringes, and a

1 sharps container with used sharps; prescription drugs for persons other than Respondent; medical
2 supplies and devices such as needle points, canulas, surgical thread, sterile surgical lubricant,
3 forceps, scissors, rubber tie-offs, butterfly catheters, female catheter kits, catheter guide for
4 airway tube, scalp vein kit, Benzoin Tincture swab sticks, and large gauge syringe; medical charts
5 for inmates; numerous bottles, baggies or loose pills of controlled substances (Ativan and Versed)
6 and dangerous drugs requiring prescriptions as listed in paragraphs 14 through 45, above, for
7 which there were no prescriptions in Respondent's name or no prescription information on the
8 drugs. The dangerous drugs set forth in paragraphs 14 through 45, above, are not the type to be
9 dispensed without a prescription or otherwise legally furnished. The medical supplies and
10 devices described herein are not the type of devices that can be lawfully dispensed without a
11 prescription or otherwise legally furnished.

12 b. On or about March 24, 2008, in the matter titled *People vs. Linda Mary MacDonald*,
13 2008, in the Superior Court, County of Amador, California, Case No. 08CR13875, Respondent
14 was convicted following her plea of no contest to violating Vehicle Code section 23152,
15 subdivision (b) [driving a motor vehicle with a blood alcohol level over 0.08%], a misdemeanor,
16 and Vehicle Code section 14601.1, subdivision (a) [driving when privilege is suspended or
17 revoked], a misdemeanor. The circumstances of the crime are that on or about February 28,
18 2008, Respondent drove with a suspended driver's license and was arrested for driving under the
19 influence of alcohol after she crashed and totaled her vehicle. Respondent's BAC was .12%.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Conviction of Crimes Involving Alcohol and Controlled Substance)**

22 48. Respondent has subjected her license to discipline pursuant to Code section 2761,
23 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
24 subdivision (c), in that on or about April 14, 2006, Respondent was convicted of a crime
25 involving the consumption of alcohol, and on March 24, 2008, Respondent was convicted for
26 possessing the controlled substance Midazolam (Versed) as more particularly set forth in
27 paragraphs 47.a and 47.b, above.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Use Alcohol to an Extent or in a Manner Dangerous or Injurious)**

3 49. Respondent has subjected her license to discipline pursuant to Code section 2761,
4 subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762,
5 subdivision (b), in that on or about February 28, 2008, Respondent used alcohol to an extent or in
6 a manner dangerous or injurious to herself or others, as more particularly set forth in paragraph
7 47.b, above.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Possession of Controlled Substances, Dangerous Drugs**

10 **And Dangerous Devices; Use of Controlled Substance)**

11 50. Respondent has subjected her license to discipline pursuant to Code section 2761,
12 subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762,
13 subdivision (a), as follows:

14 a. On or about April 7, 2005, Respondent possessed, without a prescription, the
15 controlled substances Versed (Midazolam), Ativan, and Marijuana, in violation of Code section
16 4060, as more particularly set forth in paragraphs 47.a. and 47.a.1, above.

17 b. On or about April 7, 2005, pursuant to a search warrant and search of her home by
18 law enforcement, Respondent had in her possession numerous dangerous drugs without a
19 prescription or otherwise legally furnished, in violation of Code section 4022, as more
20 particularly set forth in paragraph 47.a.1, above.

21 c. On or about April 7, 2005, pursuant to a search warrant and search of her home by
22 law enforcement, Respondent had in her possession numerous dangerous devices without a
23 prescription or otherwise legally furnished, in violation of Code section 4022, as more
24 particularly set forth in paragraph 47.a.1, above.

25 d. On or about April 7, 2005, Respondent by her own statement admitted that she
26 possessed Marijuana without a prescription, in violation of Code section 4022.

27 e. On or about April 7, 2005, Respondent by her own statement admitted that she self-
28 administered Marijuana without a prescription, in violation of Code section 4022.

1 FIFTH CAUSE FOR DISCIPLINE

2 (Self- Administered Controlled Substance)

3 51. Respondent has subjected her license to discipline pursuant to Code section 2761,
4 subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762,
5 subdivision (a), in that Respondent admitted that she self-administered Marijuana, a controlled
6 substance.

7 SIXTH CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

9 52. Respondent has subjected her license to discipline pursuant to Code section 2761,
10 subdivision (a), on the ground of unprofessional conduct, in that on or about April 7, 2005,
11 Respondent had in her possession and control at her residence, patient charts for two inmates
12 incarcerated in a state prison of the California Department of Corrections and Rehabilitation
13 thereby failing to protect the privacy of others.

14 PRAYER

15 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Registered Nursing issue a decision:

17 1. Revoking or suspending Registered Nurse License Number RN 252971, issued to
18 Linda MacDonald, also known as Linda M. MacDonald, and Linda Perris;

19 2. Ordering Linda Mary MacDonald, also known as Linda M. MacDonald, and Linda
20 Perris to pay the Board of Registered Nursing the reasonable costs of the investigation and
21 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 9/20/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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